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DATO' SERI ANWAR IBRAHIM

v.

DATUK S NALLAKARUPPAN

B

HIGH COURT MALAYA, KUALA LUMPUR
SU GEOK YIAM J
[CIVIL SUIT NO: S3-23-139-2008]
13 AUGUST 2012

C ***CIVIL PROCEDURE:*** *Further and better particulars - Defamation suit - Failure of defence to furnish particulars - Whether particulars provided was grossly insufficient and vague - Whether particulars sought relevant to defence - Whether defendant in an action for libel is to plead every one of his defences - Whether plaintiff had opportunity to refute*
D *allegations contained in defence - Whether defendant's defence disclosed no reasonable defence and was clearly unsustainable - Rules of the High Court 1980, O. 18 r. 12 & O. 78 r. 3(2)*

CIVIL PROCEDURE: *Pleadings - Defence - Defamation suit -*
E *Defendant's failure to furnish further and better particulars of his allegations - Whether particulars provided was grossly insufficient and vague - Whether particulars sought relevant to defence - Whether defendant in an action for libel is to plead every one of his defences - Whether plaintiff had opportunity to refute allegations contained in defence*
F *- Whether defendant's defence disclosed no reasonable defence and was clearly unsustainable - Rules of the High Court 1980, O. 18 r. 12 & O. 78 r. 3(2)*

CIVIL PROCEDURE: *Striking out - Defence - Defamation suit -*
G *Defendant's failure to furnish further and better particulars of his allegations - Whether particulars provided was grossly insufficient and vague - Whether particulars sought relevant to defence - Whether defendant in an action for libel is to plead every one of his defences - Whether plaintiff had opportunity to refute allegations contained in defence*
H *- Whether defendant's defence disclosed no reasonable defence and was clearly unsustainable - Whether defence was frivolous and vexatious - Rules of the High Court 1980, O. 18 r. 19*

TORT: *Defamation - Pleadings - Defence - Whether defendant in an*
I *action for libel is to plead every one of his defences - Whether information provided by defendant was grossly insufficient - Whether particulars specifically pleaded - Whether plaintiff had opportunity to refute allegations contained in defence - Rules of the High Court 1980, O. 78 r. 3(2)*

WORDS & PHRASES: *"must" - Rules of the High Court 1980, O. 18 r. 12(7) - Wording of - Requirement of particulars ordered by court pursuant to O. 18 r. 12(3) to be supplied by one party and served on other party in accordance with Form 35 - Whether requirement is mandatory*

The plaintiff filed a defamation suit against the defendant whereby it was claimed that the defendant had published an article in the local newspaper alleging that the plaintiff had received a sum of RM60 million ('the money') from a gaming company and had taken the money from the defendant personally but the plaintiff had turned around stating that the defendant had taken the money instead. In his defence, the defendant pleaded justification, fair comment and qualified privilege. Finding that the defence was too general and a bare denial, the plaintiff filed a summons in chambers praying that the defendant be ordered to produce further and better particulars of his allegations. The Senior Assistant Registrar ('SAR') allowed the plaintiff's application. On appeal, the High Court affirmed the SAR's decision and the Court of Appeal agreed with the same. However, upon furnishing the particulars, the plaintiff filed an application *vide* encl. 19 under O. 18 r. 19 (1)(b), (c) and/or (d) of the Rules of the High Court 1980 ('RHC') to strike out the defendant's defence on the ground that the particulars provided by the defendant were insufficient and vague. At this juncture, the plaintiff submitted that the defendant failed to comply with the SAR's order and the defence was frivolous and vexatious. To counter this contention, the defendant argued, *inter alia*, (i) that he could not remember the details concerning the manner, the exact places, the exact individual amounts of money and the identity of the plaintiff's intermediary or intermediaries to whom the defendant had handed over the money; (ii) that the content of the impugned words published was true; (iii) that he had complied with the SAR's order; and (iv) that it was not necessary for him to plead evidence in his defence.

Held (allowing encl. 19 with costs and entering judgment against the defendant on liability for damages):

(1) The principles of law which are applicable to the striking out of pleadings are trite. It is only in plain and obvious cases that the court will summarily order a party's pleadings to be struck out. Unless it is demonstrated to the court that a claim or answer is clearly unsustainable on its face, the court will not

act under any of the four limbs in O. 18 r. 19(1) RHC to strike it out. The onus is on the applicant (the plaintiff herein), to show that this is a plain and obvious case for striking out the defendant's defence and the entering of the judgment in favour of the plaintiff. On the facts, the plaintiff had successfully discharged his onus (*Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd*; refd). (paras 78-82)

(2) A plaintiff is entitled to know what case he has to meet under a defence. Parties are bound by their pleadings and one of the objects of pleadings is to prevent surprises. To condemn a party on a ground of which no material facts have been pleaded may be a great denial of justice. Furthermore, O. 18 r. 12(7) RHC expressly requires the particulars ordered by court pursuant to r. 12(3) to be supplied by one party to be served on the other party in accordance with Form 35. This is a mandatory requirement since the word used is "must". In this case, the particulars sought were facts which were clearly necessary and relevant to the defendant's defence. (paras 41-43, 50 & 72)

(3) Order 78 r. 3(2) RHC is a specific rule which deals with pleadings in defamation actions. The rule requires the defendant in an action of libel to plead every one of his defences failing which the plaintiff will be caught by surprise or the plaintiff will be ambushed during trial. Based on the wording used in this rule, a plaintiff has to be ensured the opportunity to understand and prepare himself to meet the defendant's allegations against the plaintiff in the impugned words in a defamation action. On the facts, the information provided by the defendant was grossly insufficient and the ordered particulars had not been specifically pleaded by the defendant as required by O. 78 r. 3(2) RHC. Further, the details of each alleged payments of money had not been specifically pleaded so as to give the plaintiff an opportunity to refute the allegations contained in the defendant's defence. (paras 51-55)

(4) The defendant's statements in his defence were general statements without specific particulars. Contrary to what was submitted by the defendant, this court was not convinced that the particulars sought by the plaintiff were evidence which need not be proved by the defendant as opposed to facts

which should be provided by the defendant. It was imperative for the defendant to have complied with the SAR's order towards achieving this end to provide the plaintiff with sufficient particulars and the fullest disclosure of matters as requested by the plaintiff. (paras 85 & 86)

(5) There could be no truth in the defendant's defence since he had failed to supply to the plaintiff with full details of each alleged transactions concerning the manner, the exact place, the exact amount of money in cash which was allegedly handed over to the plaintiff or his intermediaries. Hence, the defendant's defence disclosed no reasonable defence and was clearly unsustainable as per the first limb of O. 18 r. 19 RHC and also frivolous and vexatious as per the third limb of O. 18 r. 19 RHC. (para 87)

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Davey v. Bentinck [1893] 1 QB 185 ***(refd)***

Gasing Heights Sdn Bhd v. Aloyah Abd Rahman & Ors [1996] 3 CLJ 695 HC ***(refd)***

Grand Metropolitan Nominee (No 2) Co Ltd v. Evans [1993] 1 All ER 642 ***(refd)***

Lucas-Box v. News Group Newspapers Limited [1986] 1 WLR 147 ***(refd)***

Mirzan Mahathir v. Star Papyrus Sdn Bhd [2000] 5 CLJ 507 HC ***(refd)***

Re Jokai Tea Holdings Ltd [1993] 1 All ER 630 ***(refd)***

RHB Bank Bhd v. Hassan Mawi [2007] 10 CLJ 706 HC ***(refd)***

Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals [1998] 3 CLJ 432 CA ***(refd)***

Viscount De L'Isle v. Times Newspapers Limited [1988] 1 WLR 49 ***(refd)***

Wootton v. Sievier [1913] 3 KB 499 ***(refd)***

Zierenberg v. Labouchere [1893] 2 QB 183 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 18 rr. 12(1), (3), (7), 19(1)(b), (c), (d), O. 78 r. 3(2)

For the plaintiff - Latheefa Beebi Koya (Muhammad Afiq Mohamad Noor with her); M/s Daim & Gamany

For the defendant - Dato Sri Dr Muhammad Shafee Abdullah (Nurul Nabila Zamri with him); M/s Shafee & Co

Reported by Kumitha Abd Majid

JUDGMENT

Su Geok Yiam J:

Background

[1] On 26 August 2008, *vide* a writ of summons, encl. (1), the plaintiff sued the defendant for damages for defamation.

[2] He claimed general damages of RM50 million, aggravated and exemplary damages, an injunction to restrain the defendant and/or his agents or employees from repeating the same libellous words, interest and costs.

[3] In his statement of claim, encl. (1A), he alleged that on or about 23 August 2008, the defendant had published and had caused to be published, an article in Mingguan Malaysia, a Malay newspaper, alleging that the plaintiff had received a sum of RM60 million (the "money") from a gaming company, namely, Magnum Corporation Bhd, that the plaintiff took the money from him personally and that the defendant was not the least shocked when various allegations have surfaced concerning the plaintiff as he knew who is the real plaintiff having known the plaintiff for 30 years.

[4] The defendant also alleged that he did not know what the plaintiff did with the money.

[5] He further alleged that the plaintiff had instead turned around and alleged that he (the defendant) had taken the money.

The Impugned Words

[6] The actual words complained of read as follows in the Malay language:

(1) Datuk Nallakaruppan mendakwa Anwar telah menerima wang sebanyak RM60 juta daripada sebuah perjudian iaitu Magnum Corporation Bhd. "Anwar ambil wang sebanyak itu daripada tangan saya sendiri";

(2) Bekas rakan tenis Datuk Seri Anwar Ibrahim, Datuk S Nallakaruppan mendedahkan Penasihat Parti Keadilan Rakyat itu menerima wang daripada Magnum Corporation Bhd;

(3) Beliau tidak sedikit pun terkejut apabila timbul pelbagai tuduhan terhadap Anwar kerana mengetahui siapa sebenarnya Anwar yang dikenali 30 tahun;

(4) Anwar mengambil wang sebanyak itu dari tangan saya sendiri. Saya tidak tahu apa dia buat dengan wang itu, tetapi dia memutar kata-kata menuduh saya yang ambil wang itu.

[7] On 1 December 2008, the defendant entered his appearance, encl. (2).

[8] On 15 January 2009, the defendant filed his statement of defence ("defence"), encl. (2A).

[9] In his defence, the defendant pleaded justification, fair comment and qualified privilege.

[10] The plaintiff found the defendant's defence to be too general and that it was also a bare denial.

[11] On 19 March 2009, the plaintiff filed a Summons-in-Chambers, encl. (4), and an affidavit-in-support, encl. (3), praying that the defendant be ordered to produce further and better particulars on his allegations.

[12] The defendant filed an affidavit-in-reply on 30 April 2009, encl. (5), and on 10 June 2009, the plaintiff filed an affidavit-in-reply, encl. (6), to the defendant's affidavit-in-reply.

[13] The plaintiff and the defendant filed written submissions on 6 July 2009 and 20 July 2009, respectively. On 28 July 2009, the plaintiff filed his submissions-in-reply.

[14] On 28 August 2009, the learned Senior Assistant Registrar ("SAR") allowed the plaintiff's application.

[15] On 1 September 2009, the defendant filed a notice of appeal to the Judge-in-Chambers.

[16] On 16 November 2009, Zabariah binti Mohd Yusof JC (now Judge of the High Court) affirmed the SAR's decision and ordered the defendant to furnish the particulars as requested by the plaintiff (the "order of the High Court").

[17] On 17 November 2009, the defendant filed a notice of appeal to the Court of Appeal.

[18] On 23 November 2009, the Court of Appeal affirmed the order of the High Court and dismissed the defendant's appeal with costs.

[19] On 13 December 2011, the defendant furnished the particulars to the plaintiff.

Plaintiff's Application To Strike Out The Defendant's Defence

[20] On 29 March 2012, the plaintiff filed this application, encl. (19), together with the plaintiff's affidavit-in-support which he affirmed on 28 March 2012, pursuant to O. 18 r 19(1) (b), (c) and/or (d) of the Rules of the High Court 1980 (the "RHC 1980") to strike out the defendant's defence on the ground that the particulars as provided by the defendant are insufficient.

[21] On 19 May 2012, the defendant filed his affidavit-in-reply, encl. (21), which he had affirmed on the same date.

Plaintiff's Submissions

[22] The plaintiff has submitted that the defendant has failed to comply with the order of the learned SAR dated 28 August 2009 (the "SAR's order") and that the defendant's defence ought to be struck out and judgment entered in favor of the plaintiff.

[23] He relies on the following grounds:

[24] The defence remains vague because the further and better particulars purported to be furnished by the defendant on 13 December 2011 do not contain sufficient particulars.

[25] As the defendant has not pleaded in his defence that he could not provide the particulars because the documents concerned have been seized by the police his defence of justification is bound to fail.

[26] The defendant's defence ought to be struck out as it is frivolous and vexatious.

Defendant's Submissions

[27] The defendant submitted that as the defendant's defence is premised on justification, fair comment and qualified privilege the defendant has provided sufficient particulars.

[28] The grounds which he relies on are as follows:

[29] Firstly, only facts need to be pleaded in the defence and the defendant has complied with the SAR's order and has provided the facts. There is no necessity for the defendant to plead evidence in his defence.

[30] Secondly, all that is required of the defendant is to show that the content of the impugned words published by the defendant is true.

[31] Thirdly, just because the defendant cannot remember the details concerning the manner, the exact places, the exact individual amounts of the money, and the identity or identities of the plaintiff's intermediary or intermediaries to whom the defendant had handed over the money does not mean that the content of the impugned words are untrue.

[32] Fourthly, the defendant was justified in having published the impugned words in his speech during the by-elections in Permatang Pauh on 26 August 2008.

[33] Fifthly, the relevant documents in relation to the merits of the case are in the custody of the police. They are not in the possession of the defendant. The documents were confiscated by the police during the investigation against the defendant and the plaintiff in 1998.

[34] Sixthly, the defendant *vide* his further and better particulars dated 13 December 2012 had furnished facts that are necessary to his defence.

[35] Therefore, there is no basis for the plaintiff to strike out the defendant's defence as the particulars provided by the defendant are sufficient, the relevant documents are not in the possession of the defendant and the defendant has adduced further particulars *vide* his affidavit-in-reply filed on 16 May 2012.

Decision Of This Court

[36] On 19 June 2012, having considered the submissions of both the parties, I agreed with and accepted the submissions of the learned plaintiff's counsel that the plaintiff's application to strike out the defendant's defence had merits.

[37] I, accordingly, granted order-in-terms of the plaintiff's application in encl. (19). It meant that the court ordered the defendant's defence to be struck out with costs and judgment entered in favor of the plaintiff and for the quantum of damages to be assessed by the learned SAR (the "said decision").

[38] Being dissatisfied with the said decision the defendant has filed a notice of appeal to the Court of Appeal.

A **Grounds For The Said Decision**

[39] Below are the reasons why the court made the said decision.

The Law

B **[40]** Firstly, I shall deal with the principle of law applicable to pleadings.

[41] Parties are bound by their pleadings and one of the objects of pleadings is to prevent surprises. To condemn a party on a C ground of which no material facts have been pleaded may be a great denial of justice.

[42] Order 18 r. 12(1) of the Rules of the High Court 1980 (the "RHC 1980") requires every pleading to contain the necessary particulars of any claim, defence or other matter D pleaded.

[43] Order 18 r. 12(7) of the RHC expressly requires the particulars ordered by the court pursuant to r. 12(3) to be supplied by one party to be served on the other party in E accordance with form 35. In my judgment, this is a mandatory requirement because the word used is "must".

[44] Therefore, the submission of the learned defendant's counsel that the defendant had served further particulars in the F defendant's affidavit-in-reply, encl. (21), to be without merit and ought to be rejected on the ground that there has been a willful non-compliance of O. 18 r. 12(7).

[45] O. 18 r. 12(1), (3) and (7) read as follows:

G (1) Subject to paragraph (2), **every pleading must contain the necessary particulars of any** claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words:

H (a) particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind I or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

(3) **The court may order a party to serve on any other** party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit to stand as a pleading, or a statement of the nature of the case on which he relies, **and the order may be made on such terms as the court thinks just**.

(4) …

(5) …

(6) …

(7) The particulars requested or ordered and supplied must be served in accordance with form 35.

(emphasis added).

[46] In *RHB Bank Bhd v. Hassan Mawi* [2007] 10 CLJ 706, Hamid Sultan Abu Backer JC (now judge of the High Court) summarised the principles and the rules as to pleadings at p. 717 as follows:

(a) Pleadings are statement in writing, drawn up and filed by each party to an action stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer. It is a cardinal rule that parties are bound by their pleadings and are not allowed to adduce facts, which they had not pleaded (see *State of Government of Perak v. Muniandy* [1985] 1 LNS 117 HC). In *Blay v. Pollard & Morris* 1 KB 628 Scrutton LJ observed:

> Cases must be decided on the issues on the record; and if it is desired to raise other issues they must be placed on the record by amendment.

(b) The importance of pleadings was emphasised by the Supreme Court in the case of *Lee Ah Chor v. Southern Bank Bhd* [1991] 1 CLJ 667; [1991] 1 CLJ (Rep) 239. The court stated that where a vital issue was not raised in the pleadings it could not be allowed to be argued and to succeed on appeal. In K.E.P. *Mohamed Ali v. K.E.P. Mohamed Ismail* [1980] 1 LNS 169; [1981] 2 MLJ 10, HRH Raja Azlan Shah CJ (as HRH then was) observed:

> As one of the objects of modern pleadings is to prevent surprise, we cannot for one moment think that the defendant was taken by surprise. To condemn a p arty on a ground of which no material facts have been

A pleaded may be as great a denial of justice as to condemn him on a ground on which his evidence has been improperly excluded.

[47] In my judgment, the particulars as previously ordered by the learned SAR are obviously necessary in order to enable an B adequate reply to be filed by the plaintiff to the defendant's defence otherwise the learned SAR would not have ordered them in the first place. Similarly, the learned JC would not have affirmed her order and the Court of Appeal would not have affirmed the order of the High Court. C

[48] In *Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals* [1998] 3 CLJ 432, Gopal Sri Ram JCA (as he then was) in delivering the decision of the Court of Appeal held that it was clear that some of the particulars sought by the second defendant D were patently necessary and relevant, ie, particulars relating to whether any other partners of the second defendant had contributed to the article, and to the issue of the second defendant's vicarious liability for the first defendant's alleged malice. His Lordship, accordingly, allowed the particulars sought by the E second defendant.

[49] However, in respect of the particulars sought by the second defendant as to the extent of the circulation of the publication (the magazine) His Lordship held that the particulars sought were F evidence. His Lordship, accordingly, disallowed the particulars sought.

[50] In the instant case, the particulars sought were facts which are clearly necessary and relevant to the defendant's defence.

G **[51]** Order 78 r. 3(2) of the RHC is a specific rule which deals with pleadings in defamation actions. The rule requires the defendant in an action of libel to plead every one of his defences failing which the plaintiff will be caught by surprise or the plaintiff will be ambushed during the trial.

H **[52]** The rule reads as follows:

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and I in so far as they consist of expression of opinion, they are fair comment on a matter of public interest, or pleads to the

like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

[53] In my judgment, looking at the wording used in the rule, the intention and objective of the rule must be none other than to ensure that a plaintiff has the opportunity to understand and to prepare himself to meet the allegations of a defendant against the plaintiff in the impugned words in a defamation action. It is, therefore, absolutely essential and crucial for the defendant in the instant case to supply to the plaintiff the particulars as ordered by the learned SAR to enable the plaintiff to make the necessary refutation or otherwise of the serious and shocking allegations of the defendant in the impugned words.

[54] It is manifestly clear that the information provided by the defendant is grossly insufficient and the ordered particulars have not been specifically pleaded by the defendant as required by O. 78 r. 3(2) of the RHC.

[55] The details of each of the alleged payments of the money have not been specifically pleaded so as to give an opportunity to the plaintiff to prepare his case to refute the allegations contained in the defendant's defence.

[56] With reference to answer no: (b)(i) 4 of the question posed by the plaintiff, the defendant has merely named an "Ismail" who is alleged to be the employee of Magnum Corporation. The defendant did not provide the full name of this intermediary.

[57] In my judgment, the name "Ismail" is a fairly common name and there is no reference to a particular individual. The defendant ought to have provided the full name and other particulars of the individual concerned eg, his identification card number and the position which he held in Magnum Corporation at the material time to assist the plaintiff in identifying the individual concerned.

[58] With reference to para. 4 of the defence; the defendant has failed to provide detailed particulars as to the name and identification card number of the alleged intermediary of the defendant.

[59] With reference to para. 4 of the defence, the defendant failed to answer question (a)(iii) as to the place, date, time and how the money was received.

[60] Instead, the defendant merely answered randomly without detailing how the transactions had been carried out. Given the alleged libellous words published by the defendant which involve such a huge amount of money ie, RM 60million, the answers given were trivial, of no utility and vexatious.

[61] The defendant further failed to respond to the particulars of para. (b)(i) and (ii) of the plaintiff's questions and repeated the same answers as in paras. (a)(i) and (a)(ii).

[62] With reference to para. 6.1(a) of the defence, the defendant failed to answer paras. (c)(i), (c)(ii), (c)(iii), (c)(iv) and (c)(v), and had again failed to give details about the place, date, time and number of transactions and amount of payment allegedly made in each of the transactions claimed by the defendant. The defendant claimed that he could not remember.

[63] The defendant also failed to answer and give details to paras. (c)(vi) and (c)(vii) with reference to each of the alleged transactions.

[64] With reference to question (c)(vii) the defendant did not answer the questions posed by the plaintiff as the defendant only provided random and general places without detailing them.

[65] The defendant also failed to comply with the court order with regard to the question in para. (d)(i) as to the date, time and place for each of the so called transactions. The defendant's answer is frivolous and vexatious as the impugned libellous words published by the defendant involved a total amount of RM 60 million the payment of which the defendant claimed was made in cash.

[66] With reference to question (d)(ii) where the plaintiff had requested the defendant to provide the name and type of publication of the said allegations made by the plaintiff against the defendant, the defendant did not answer the plaintiff's questions. The defendant merely alleged that the plaintiff had made the said allegations against the defendant during the Permatang Pauh by-elections on 26 August 2008.

[67] Therefore, the defendant was clearly in default of the order of the High Court as he could not provide particulars for his defence, rendering it to be clearly frivolous and vexatious.

[68] In my judgment, as the plaintiff has duly pleaded all the material facts in his statement of claim which disclose a reasonable cause of action against the defendant for libel and there is nothing to prove on the part of the defendant the defendant's defence ought to be struck out and judgment entered in favour of the plaintiff.

[69] The learned JC (now judge of the High Court) was, therefore, entirely correct when she held that the identity or identities of the intermediary or intermediaries is a matter of fact and not evidence and she, consequently, ordered the defendant to provide the detailed particulars to the plaintiff of the defendant's alleged intermediary.

[70] It has been decided that failure on the part of a defendant to provide particulars constitutes a failure to comply with the order of the court and such action shall be dismissed (see *Re Jokai Tea Holdings Ltd* [1993] 1 All ER 630 and *Grand Metropolitan Nominee (No. 2) Co Ltd v. Evans* [1993] 1 All ER 642).

[71] In *Davey v. Bentinck* [1893] 1 QB 185 the English Court of Appeal was of the view that where a plaintiff is ordered to give particulars, one of the terms of the order may be that the action shall be dismissed unless the particulars are delivered within a certain time.

[72] In *Mirzan Mahathir v. Star Papyrus Sdn Bhd* [2000] 5 CLJ 507, the Court held as follows at p. 516b:

> … On this it is necessary to cite a passage from Carter-Ruck on Libel and Slander 5th edn, 1997 at p. 103. It reads as follows:
>
> > … A defendant who pleads justification is required to deliver full particulars of the facts and the matter upon which he relies in support of such a plea and the evidence at the trial in support of this plea will be strictly confined to these particulars. The particulars must be sufficiently detailed not merely to enable the plaintiff to go to trial knowing the general lines of the case which is to be made against him, but to know the particular facts which the defendant alleges against him and which go to justify the imputation contained in the libel.

[73] In fact, in *Wootton v. Sievier* [1913] 3 KB 499 Kennedy LJ in delivering the judgment of the Court of Appeal said at p. 508 (quoting Lord Esher MR in *Zierenberg v. Labouchere* [1893] 2 QB 183 at p. 187):

> ... The plea ought to state the charge with the same precision as in an indictment.' Further, as a general rule it is now, I think, established, that, if the particulars are such as the defendant ought to give, he cannot refuse to do so merely on the ground that his answer will disclose the names of persons whom he may intend to call as witnesses at the trial.

[74] A plaintiff is entitled to know what case he has to meet under a defence.

[75] In *Mirzan's case*, the court cited with approval the principles laid down in *Lucas-Box v. News Group Newspapers Limited* [1986] 1 WLR 147 and the observations made by Mustill LJ in the case of *Viscount De L'Isle v. Times Newspapers Limited* [1988] 1 WLR 49 that the defendant must spell out with sufficient precision his defence to enable the plaintiff to know what case he has to meet.

[76] Here even though on the surface it would appear that the defendant has provided the particulars in compliance with the order of the High Court but a perusal of the particulars reveal that the defendant has in actual fact failed to provide sufficient particulars. The court is, therefore, of the view that the defendant has failed to comply with the order of the court and the defendant's defence must be struck out.

[77] Secondly, I shall deal with the principles applicable to the exercise of the discretion of the court in striking out a party's pleadings, in particular, in a libel action.

[78] Order 18 r. 19(1) of the RHC confers discretion on the courts to strike out a party's pleading.

[79] The rule reads as follows:

> **The court may at any stage of the proceedings order to be struck out** or amended **any pleading** or the indorsement, **of any writ in the action**, or anything in any pleading or in the indorsement, **on the ground that**:
>
> (a) **it discloses no reasonable cause of action or defence**, as the case may be; or
>
> (b) **it is scandalous, frivolous or vexatiou**s; or
>
> (c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court; A

and may order the action to be stayed or dismissed or **judgment to be entered accordingly**, as the case may be.

(emphasis added).

B

[80] The principles of law which are applicable to the striking out of pleadings are trite. It is only in clear and obvious cases that the court will summarily order a party's pleading to be struck out. Unless it is demonstrated to the court that a claim or answer is clearly unsustainable on its face the court will not act under any C of the four limbs in O. 18 r. 19(1) to strike it out.

[81] The onus is on the applicant who is the plaintiff in the instant case to show that this is a plain and obvious case for the striking out the defendant's defence and the entering of judgment in favour of the plaintiff. D

[82] In my judgment, the plaintiff has successfully discharged his onus. He has clearly shown that this is a plain and obvious case for the exercise of the court's discretion based on the matters mentioned earlier on in this judgment. E

[83] In *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7, the Supreme Court held that a court can only adopt the summary procedure of striking out pleadings when it can be clearly seen that a claim or answer is on F the face of it obviously unsustainable. In that case the court said as follows at p. 11e:

> The principles upon which the court acts in exercising its power under any of the four limbs of O. 18 r. 19(1) Rules of the High Court 1980 are well settled. It is only in plain and obvious cases G that recourse should be had to the summary process under this rule. This summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsustainable.

[84] In *Gasing Heights Sdn Bhd v. Aloyah Abd Rahman & Ors* H [1996] 3 CLJ 695, the High Court held that in determining whether the statement of claim discloses a reasonable cause of action, the state of affairs which the court must have regard to is that which prevailed on the date the action is filed. This has to I be determined by an examination of the pleading itself.

[85] In my judgment, the same applies to the defendant's defence. The defendant's statements in his defence are general statements without specific particulars. As stated earlier on in this judgment, the particulars that the plaintiff sought are facts which are clearly necessary and relevant for the plaintiff to prepare his case.

[86] It is imperative for the defendant to comply with the order of the learned SAR and towards achieving this end to provide to the plaintiff sufficient particulars and the fullest disclosure of the matters as requested by the plaintiff. Contrary to what was submitted by the defendant, this court was not convinced that the particulars that the plaintiff had sought are evidence which need not be provided by the defendant as opposed to facts which should be provided by the defendant.

[87] After considering the submissions by both parties, this court was satisfied that the plaintiff has successfully demonstrated to this court that this is indeed a plain and obvious case to strike out the defendant's defence. It follows, therefore, that as the defendant has failed to supply to the plaintiff the full details of each of the alleged transactions concerning the manner, the exact place, the exact amount of money in cash which was allegedly handed over to the plaintiff or to the plaintiff's intermediaries by the defendant or the defendant's intermediary there could be no truth in the defendant's defence. Therefore, it could be safely concluded by the court that the defendant's defence discloses no reasonable defence and is clearly unsustainable as per the first limb of O. 18 r. 19 of the RHC 1980. Quite apart from that it is also frivolous and vexatious as per the third limb of O. 18 r. 19 of the RHC 1980.

Conclusion

[88] In view of the reasons as set out above, the court was of the view that the order of the court in striking out the defendant's defence with costs and entering judgment against the defendant on liability for damages to be assessed by the learned SAR is fair and just.